## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO. 5:09-CR-187-FL-2

UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	
	)	ORDER
CHRISTIAN TOBIAH MURRAY,	)	
	)	
Movant.	)	

Christian Tobiah Murray (hereinafter "movant") submitted a letter (DE # 91) to this court on October 25, 2010. Pursuant to Castro v. United States, 540 U.S. 375 (2003), the court hereby provides movant with notice that it intends to recharacterize his letter as an attempt to file a motion under 28 U.S.C. § 2255. See United States v. O'Keefe, 169 F.3d 281, 289 (5th Cir. 1999) ("Federal Rule of Civil Procedure 60(b) . . . simply does not provide for relief from a judgment in a criminal case."). The court also notifies movant of the § 2255 restrictions on second or successive motions, the one year period of limitations, and the four dates in § 2255 to be used in determining the starting date for the limitations period. See 28 U.S.C. § 2255.

The court hereby permits movant to file a response to the court's proposed recharacterization within twenty-one (21) days from the date of this order. The court advises movant that if, within the time set by the court, movant agrees to have the motion recharacterized or does not respond in opposition to the recharacterization, the court shall consider the motion as one under § 2255 and shall consider it filed as of the date the original motion was filed. If, however, movant responds

within the time set by the court but does not agree to have the motion recharacterized, the court will not treat it as a § 2255 motion but shall rule on the merits of the motion as filed.

If movant agrees to or acquiesces in the recharacterization, the court shall permit amendments to the motion to the extent permitted by law. See United States v. Emmanuel, 288 F.3d 644, 649 (4th Cir. 2002) (noting that amendments to a § 2255 motion made after expiration of the one-year statute of limitations do not relate back to the original motion and are therefore untimely), overruled on other grounds by, United States v. Blackstock, 513 F.3d 128, 132-133 (4th Cir. 2008). Movant is advised that the format of any § 2255 motion must comply with Rule 2, Federal Rules Governing § 2255 Proceedings, and Local Civil Rule 81.2 of this court. All filings, including § 2255 motions on the correct form, must be submitted to:

> Clerk of Court United States District Court, E.D.N.C. Terry Sanford Federal Building 310 New Bern Avenue, Room 574 Raleigh, NC 27601 ATTN: Prisoner Litigation Division

SO ORDERED, this the 23' day of November, 2010.

Chief United States District Judge